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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Concerning
Relationship Between California Energy Utilities
And Their Holding Companies And
Non-Regulated Affiliates.

Rulemaking 05-10-030
(Filed October 27, 2005)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING NOTICE OF INTENT TO CLAIM COMPENSATION**

1. Summary

Following review of the Notice of Intent (NOI) filed by Consumer Federation of California (CFC), and in consultation with Assigned Commissioner Geoffrey F. Brown, this ruling makes a preliminary finding that CFC is eligible to request intervenor compensation in this rulemaking. No opposition has been filed.

2. Background – Standards for NOI Review

Under Pub. Util. Code § 1804(a)(1), “[a] customer who intends to seek an award under this article shall, within 30 days after the prehearing conference (PHC) is held, file and serve on all parties to the proceeding a notice of intent to claim compensation.” Section 1804(a)(2) sets forth the information that a NOI must include.

Pursuant to Decision (D.) 98-04-059, the preliminary ruling on eligibility must determine whether the intervenor is a customer, as defined in § 1802(b). The intervenor may qualify as a customer in one of three ways: as a participant representing consumers [§ 1802(b)(1)(A)]; a representative authorized by a

customer [§ 1802(b)(1)(B)]; or a representative of a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential customers [§ 1802(b)(1)(C)]. Participation in Commission proceedings by parties representing the full range of affected interests is important and assists the Commission in ensuring that the record is fully developed and that each customer group receives adequate representation.

Section 1804(a)(2)(B) provides that only those customers for whom participation or intervention would impose a significant financial hardship may receive intervenor compensation. Section 1802(g) defines “significant financial hardship” to mean “either that the customer cannot without undue hardship afford to pay the costs of effective participation, including advocate’s fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.”

If the intervenor includes a financial hardship showing in the NOI, rather than deferring it to the request, the preliminary ruling shall address the showing. Section 1804(b)(1) provides that “[a] finding of significant financial hardship shall create a rebuttable presumption of eligibility for compensation in other Commission proceedings commencing within one year of the date of that finding.”

In addition to the required assessment of eligibility, the preliminary ruling may address other issues raised by the NOI, such as nature and cost of planned participation.

3. Discussion

3.1 Eligibility

CFC filed its NOI three days after the Commission mailed D.06-06-062, which amends the earlier Order Instituting Rulemaking (OIR). D.06-06-062 revises the schedule for this proceeding but does not set a prehearing conference or a date for the filing of NOIs. CFC has acted promptly to file the NOI; the filing is timely.

CFC is a non-profit federation comprising individual members and member organizations whose own memberships consist of California consumer groups, senior citizens groups, and labor organizations. CFC states that all of its members are residential customers of California investor-owned utilities. By ruling on May 11, 2006, Administrative Law Judge (ALJ) Dorothy Duda made a finding of significant hardship in connection with CFC's participation in Commission Rulemaking (R.) 06-03-004, the California Solar Initiative. Because CFC filed this NOI two months later – well within a year of the eligibility finding – a rebuttable presumption exists that CFC should be found eligible here.¹ CFC's NOI is unopposed.

Review of the NOI indicates that CFC's organizational form, the composition of its membership, and the costs to its membership of participation in a Commission proceeding have not changed in the past several months. CFC attaches a copy of its bylaws, as amended November 16, 2002, which provide

¹ CFC notes the May 11, 2006 ruling in its July 5, 2006 letter to me requesting inclusion as an appearance on the service list for this rulemaking. If a § 1804(b)(1) rebuttable presumption of eligibility applies to CFC at the time it files any future NOI, that fact should be set forth in the NOI, together with the proceeding number in which the eligibility ruling was issued and the date of the ruling.

that the organization “shall promote the interests of urban and rural consumers” and “represent consumers before public and private agencies at all levels.” The bylaws authorize CFC’s Executive Director to represent the interests of members in legislative and regulatory proceedings. These provisions qualify CFC as a customer under § 1802(b)(1)(C). CFC need not attach a copy of its bylaws to future NOIs unless it amends the quoted terms or adds, amends or deletes any other terms which might affect an eligibility finding. However, any future NOI shall include the informational cross-references necessary to locate the bylaws on file with the Commission (i.e., proceeding name and number, date NOI filed).

Likewise, the financial hardship to CFC’s membership this NOI or the NOI filed in R.06-03-004 does not appear to have changed in the last several months. The NOI states that “[t]he cost of effective participation, including fees paid attorneys and expert witnesses and other reasonable costs of participation, are far greater than both the value to individual members of the CFC and the cost to each member of effective participation in the proceeding.” (NOI, p. 4.) The May 11, 2006 eligibility finding includes substantially similar language. Absent changed circumstances, the significant hardship finding continues to apply to CFC.

CFC is eligible to apply for intervenor compensation in this rulemaking. However, a finding of significant financial hardship in no way ensures compensation. (§ 1804(b)(2).)

3.2 Other Issues

Section 1804(a)(2)(A)(i) requires NOIs to include a statement of the nature and extent of the customer’s planned participation in the proceeding to the extent this can be predicted. CFC plans to participate at every procedural opportunity created by the preliminary schedule: comment on D.06-06-062 (one

round), public workshop, oral argument, and comment on the draft decision (two rounds, both opening comment and reply).² If settlement discussions occur, CFC expects to participate in them as well. CFC plans to focus on issues which affect the utilities' costs and rates, particularly those which the Public Utility Holding Company Act was enacted to address. CFC states that it "intends to provide comments on possible solutions to problems identified by the Commission, e.g., the use of holding company structures to impair a utility company's financial health and increase the cost of a utility company's investments, expenses and rates." (NOI, p. 5.)

Section 1804(a)(2)(A)(ii) requires that NOIs include an itemized estimate of the compensation the customer expects to receive. CFC estimates a total, projected budget of \$43,300, based on the time it anticipates its attorney, executive director and researcher are likely to expend and on limited travel and other associated costs of participation.

The scope and focus of CFC's anticipated participation appears reasonable, as does its budget estimate. The NOI qualifies that CFC's actual participation will depend upon a number of unknown factors, including the issues which become important as this rulemaking proceeds and the resources available to CFC at that time. However, CFC adds that it "hopes to coordinate its efforts with other intervenor groups to prevent unnecessary duplication of effort, and to further consumers' interest in avoiding the costs associated with abuse of the holding company structure." (*Ibid.*)

² D.06-06-026 lists the dates for each event.

Therefore, **IT IS RULED** that:

1. The Consumer Federation of California (CFC) is a customer as that term is defined in § 1802(b)(1)(C) and has met the eligibility requirements of § 1804(a), including the requirement that it establish significant financial hardship. CFC is found eligible for compensation in this rulemaking.

2. CFC need not attach a copy of its bylaws to future NOIs unless it amends, adds, or deletes any terms which might affect an eligibility finding. However, any future NOI shall include informational the cross-references necessary to locate the bylaws on file with the Commission (i.e., proceeding name and number; date NOI filed).

Dated July 25, 2006, at San Francisco, California.

/s/ JEAN VIETH
Jean Vieth
Administrative Law Judge

INFORMATION REGARDING SERVICE

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Dated July 25, 2006, at San Francisco, California.

/s/ ERLINDA PULMANO

Erlinda Pulmano

SERVICE LIST

***** APPEARANCES *****

Marc D. Joseph
Attorney At Law
ADAMS, BROADWELL, JOSEPH & CARDOZO
601 GATEWAY BLVD., STE. 1000
SOUTH SAN FRANCISCO CA 94080
(650) 589-1660
mdjoseph@adamsbroadwell.com

James Weil
Director
AGLET CONSUMER ALLIANCE
PO BOX 37
COOL CA 95614
(530) 885-5252
jweil@aglet.org
For: AGLET CONSUMER ALLIANCE

Alexis K. Wodtke
Attorney At Law
CONSUMER FEDERATION OF CALIFORNIA (CFC)
520 S. EL CAMINO REAL, STE. 340
SAN MATEO CA 94402
(650) 375-7847
lex@consumercal.org

Daniel W. Douglass
Attorney At Law
DOUGLASS & LIDDELL
21700 OXNARD STREET, SUITE 1030
WOODLAND HILLS CA 91367
(818) 961-3001
douglass@energyattorney.com

Andrew B. Brown
Attorney At Law
ELLISON, SCHNEIDER & HARRIS, LLP
2015 H STREET
SACRAMENTO CA 95814
(916) 447-2166
abb@eslawfirm.com

Frederick Brown
Attorney For Sempra Energy
GIBSON, DUNN & CRUTCHER, LLP
ONE MONTGOMERY STREET
SAN FRANCISCO CA 94104-4505
(415) 393-8204
fbrown@gibsondunn.com

Brian T. Cragg
Attorney At Law
GOODIN MACBRIDE SQUERI RITCHIE & DAY LLP
505 SANSOME STREET, SUITE 900
SAN FRANCISCO CA 94111
(415) 392-7900
bcragg@gmsr.com

Gayatri Schilberg
JBS ENERGY
311 D STREET, SUITE A
WEST SACRAMENTO CA 95605
(916) 372-0534
gayatri@jbsenergy.com
For: JBS ENERGY

Steven C. Nelson
Attorney For Sempra Energy
101 ASH STREET HQ 13D
SAN DIEGO CA 92101-3017
(619) 699-5136
snelson@sempra.com

Joseph M. Malkin
Attorney At Law
ORRICK, HERRINGTON & SUTCLIFFE LLP
405 HOWARD STREET
SAN FRANCISCO CA 94105
(415) 773-5505
jmalkin@orrick.com
For: PG&E Corporation

Shirley Woo
CHRISTOPHER J. WARNER
Attorney At Law
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 7442
SAN FRANCISCO CA 94120
(415) 973-2248
saw0@pge.com
For: Pacific Gas and Electric Company

John Ford
Legal Department
PG&E NATIONAL ENERGY GROUP
ONE MARKET, SPEAR TOWER, STE. 2400
SAN FRANCISCO CA 94105
(415) 817-8203
John.Ford@pge-corp.com
For: PG&E Corporation

RICHARD ROBINSON & ASSOCIATES, INC.
1121 L STREET, SUITE 310
SACRAMENTO CA 95814
choy@rrassoc.com

Lisa Urick
Attorney At Law
SAN DIEGO GAS & ELECTRIC COMPANY
101 ASH STREET
SAN DIEGO CA 92101
(619) 699-5070
lurick@semptra.com
For: SAN DIEGO GAS & ELECTRIC COMPANY

Daniel A. King
SEMPRA ENERGY
101 ASH STREET, HQ13
SAN DIEGO CA 92101
(619) 696-4350
daking@semptra.com

David J. Gilmore
Attorney At Law
SEMPRA ENERGY
555 WEST FIFTH STREET
LOS ANGELES CA 90013-1011
(213) 244-2945
dgilmore@semptra.com
For: Southern California Gas Company/San Diego Gas & Electric Company

David E. Van Iderstine
Attorney At Law
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE, ROOM 345
ROSEMEAD CA 91770
(626) 302-3121
david.vaniderstine@sce.com
For: Southern California Edison

Lisa-Marie Salvacion
Legal Division
RM. 4107
505 VAN NESS AVE
San Francisco CA 94102
(415) 703-2069
lms@cpuc.ca.gov

Carrie Camarena
Attorney At Law
THE GREENLINING INSTITUTE
1918 UNIVERSITY AVE. 2ND FLOOR
BERKELEY CA 94704

Marcel Hawiger
Attorney At Law
THE UTILITY REFORM NETWORK
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO CA 94102
(415) 929-8876
marcel@turn.org
For: THE UTILITY REFORM NETWORK

Michael Shames
Attorney At Law
UTILITY CONSUMERS' ACTION NETWORK
3100 FIFTH AVENUE, SUITE B
SAN DIEGO CA 92103
(619) 696-6966
mshames@ucan.org
For: UTILITY CONSUMERS' ACTION NETWORK

Mark Waterworth
Division of Ratepayer Advocates
RM. 1050
770 L STREET, SUITE 1050
Sacramento CA 95814
(415) 703-2385
lmw@cpuc.ca.gov

James R. Wuehler
Division of Ratepayer Advocates
RM. 4208
505 VAN NESS AVE
San Francisco CA 94102
(415) 703-1667
jrw@cpuc.ca.gov

***** STATE EMPLOYEE *****

Clarence Binninger
Deputy Attorney General
DEPARTMENT OF JUSTICE
ENERGY & CORPORATE RESPONSIBILITY SECTION
455 GOLDEN GATE AVENUE, SUITE 11000
SAN FRANCISCO CA 94102
(415) 703-5528
clarence.binninger@doj.ca.gov

Peter Hanson
Executive Division
RM. 4104
505 VAN NESS AVE
San Francisco CA 94102
(415) 703-1053
pgh@cpuc.ca.gov

R.05-10-030 XJV/eap

(510) 926-4002
carriec@greenlining.org
For: THE GREENLINING INSTITUTE

Annadel Almendras
OFFICE OF THE ATTORNEY GENERAL
455 GOLDEN GATE AVENUE, SUITE 11000
SAN FRANCISCO CA 94102
(415) 703-5565
annadel.almenbras@boj.ca.gov

Aram Shumavon
Executive Division
RM. 5306
505 VAN NESS AVE
San Francisco CA 94102
(415) 703-2117
sap@cpuc.ca.gov

Jean Vieth
Administrative Law Judge Division
RM. 5010
505 VAN NESS AVE
San Francisco CA 94102
(415) 703-2194
xjv@cpuc.ca.gov

Sean Wilson
Water Division
AREA 3-C
505 VAN NESS AVE
San Francisco CA 94102
(415) 703-1818
smw@cpuc.ca.gov

***** INFORMATION ONLY *****

Karen Terranova
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, STE 2200
SAN FRANCISCO CA 94104
(415) 421-4143
filings@a-klaw.com

Donald Brookhyser
Attorney At Law
ALCANTAR & KAHL LLP
1300 S.W. 5TH AVENUE, SUITE 1750
PORTLAND OR 97201
(503) 402-9900
deb@a-klaw.com

Elizabeth Westby
ALCANTAR & KAHL, LLP
1300 SW FIFTH AVENUE, SUITE 1750
PORTLAND OR 97201

J.A. Savage
CALIFORNIA ENERGY CIRCUIT
3006 SHEFFIELD AVE.
OAKLAND CA 94602
(510) 534-9109
editorial@californiaenergycircuit.net
For: CALIFORNIA ENERGY CIRCUIT

CALIFORNIA ENERGY MARKETS
517-B POTRERO AVENUE
SAN FRANCISCO CA 94110
CEM@newsdata.com

Mark P. Schreiber
Attorney At Law
COOPER, WHITE & COOPER, LLP
201 CALIFORNIA STREET, 17TH FLOOR
SAN FRANCISCO CA 94111
(415) 433-1900
mschreiber@cwclaw.com

Patrick M. Rosvall
Attorney At Law
COOPER, WHITE & COOPER, LLP
201 CALIFORNIA STREET, 17TH FLOOR
SAN FRANCISCO CA 94111
(415) 433-1900
smalllecs@cwclaw.com

Donald C. Liddell, Pc
DOUGLAS & LIDDELL
2928 2ND AVENUE
SAN DIEGO CA 92103
(619) 993-9096
liddell@energyattorney.com

Joseph F. Wiedman
Attorney At Law
GOODIN MACBRIDE SQUERI RITCHIE & DAY, LLP
505 SANSOME STREET, SUITE 900
SAN FRANCISCO CA 94111
(415) 392-7900
jwiedman@gmsr.com

John W. Leslie
Attorney At Law
LUCE, FORWARD, HAMILTON & SCRIPPS, LLP
11988 EL CAMINO REAL, SUITE 200
SAN DIEGO CA 92130
(858) 720-6352
jleslie@luce.com

(503) 402-8709
egw@a-klaw.com

Richard Mccann, Ph.D
M. CUBED
2655 PORTAGE BAY, SUITE 3
DAVIS CA 95616
(530) 757-6363
rmccann@umich.edu

MRW & ASSOCIATES, INC.
1999 HARRISON STREET, SUITE 1440
OAKLAND CA 94612
(510) 834-1999
mrw@mrwassoc.com

Angela Torr
PACIFIC GAS & ELECTRIC COMPANY
77 BEALE STREET, RM. 1058, B10A
SAN FRANCISCO CA 94105
(415) 973-6077
act6@pge.com

Karen Forsgard
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B10A
SAN FRANCISCO CA 94105
(415) 973-6069
kaf4@pge.com

Leslie Danielson
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET, B10A
SAN FRANCISCO CA 94105
lad1@pge.com

Shay Labray
Manager, Regulatory
PACIFICORP
825 NE MULTNOMAH, SUITE 2000
PORTLAND OR 97232
(503) 813-6176
shayleah.labray@pacificorp

Gina Dixon
SAN DIEGO GAS & ELECTRIC COMPANY
MAIL STOP CP32H
8330 CENTURY PARK COURT
SAN DIEGO CA 92123
GDixon@semprautilities.com

Marzia Zafar

Central Files
SAN DIEGO GAS AND ELECTRIC COMPANY
101 ASH STREET, CP31E
SAN DIEGO CA 92101
(858) 654-1240
CentralFiles@semprautilities.com

Case Administration
SOUTHERN CALIFORNIA EDISON COMPANY
ROOM 370
2244 WALNUT GROVE AVENUE
ROSEMEAD CA 91770
(626) 302-4875
case.admin@sce.com

Andrew W. Bettwy
Attorney At Law
SOUTHWEST GAS CORPORATION
5241 SPRING MOUNTAIN ROAD
LAS VEGAS NV 89102
(702) 876-7107
andy.bettwy@swgas.com

Bridget B. Jensen
Associate General Counsel/Legal Affairs
SOUTHWEST GAS CORPORATION
5241 SPRING MOUNTAIN ROAD
LAS VEGAS NV 89150-0002
bridget.jensen@swgas.com

Christopher Vaeth
Director, Special Projects
THE GREENLINING INSTITUTE
1918 UNIVERSITY AVENUE, SECOND FLOOR
BERKELEY CA 94704
(510) 926-4012
chrisv@greenlining.org
For: THE GREENLINING INSTITUTE

Pamela Palpallatoc
THE GREENLINING INSTITUTE
1918 UNIVERSITY AVENUE, SECOND FLOOR
BERKELEY CA 94704
(510) 926-4016
pamelap@greenlining.org
For: THE GREENLINING INSTITUTE

Robert Gnaizda
Attorney At Law
THE GREENLINING INSTITUTE

R.05-10-030 XJV/eap

SAN DIEGO GAS & ELECTRIC/SOCAL GAS
601 VAN NESS AVENUE, SUITE 2060
SAN FRANCISCO CA 94102
(415) 202-9986
mzafar@semprautilities.com
For: SEMPRA UTILITIES

1918 UNIVERSITY AVENUE, SECOND FLOOR
BERKELEY CA 94704
(510) 926-4006
robertg@greenlining.org
For: THE GREENLINING INSTITUTE

Samuel Kang
Economic Development Associate
THE GREENLINING INSTITUTE
1918 UNIVERSITY AVENUE, 2ND FLOOR
BERKELEY CA 94704
(510) 926-4021
samuelk@greenlining.org
For: THE GREENLINING INSTITUTE

Regina Costa
THE UTILITY REFORM NETWORK
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO CA 94102
(415) 929-8876 X312
rcosta@turn.org

(END OF SERVICE LIST)